Shell (M) Trading Sdn Bhd v Tan Bee Leh @ Tan Yue Khoen & Ors

HIGH COURT (KUALA LUMPUR) — CIVIL SUIT NO S2–1175 OF 2006
NIK HASMAT JC
21 DECEMBER 2012

Evidence — Standard of proof — Fraud — Standard of proof for fraud in civil proceedings — Beyond reasonable doubt

Tort — Conspiracy — Conspiracy to defraud — Defendant disposing land to third parties in breach of lease in favour of plaintiff — Whether defendants had wrongfully and maliciously conspired to perpetrate fraud on plaintiff in disposal of land — Whether conspiratorial agreement to intentionally injure and cause economic loss to plaintiff proven — Standard of proof required to prove conspiracy

Tort — Conspiracy — Proof of — Allegation of conspiracy to defraud — Burden of proof — Whether conspiracy proven

Pursuant to a lease agreement the first defendant granted a lease to the plaintiff a parcel of land for a period of 15 years for the purpose of the erection of the plaintiff's petrol station. Pursuant to retailer license agreement ('RELA'), the first defendant operated the plaintiff's petrol station business on the said land. Pursuant to the RELA, the plaintiff erected a petrol station on the land and provided petroleum products and equipments for the first defendant's petrol station business. All such buildings, plant and appliances were to remain the property of the plaintiff. Upon expiry of the 15 years, the plaintiff had in accordance with the lease agreement given the first defendant notice of the plaintiff's intention to extend the lease for a further 15 years. The first defendant however denied plaintiff's exercise of the option for the renewal of the lease and demanded the removal of plaintiff's equipments from the said land. The plaintiff was subsequently informed that the said land together with plaintiff's equipment had been sold to the second and third defendants. The plaintiff accordingly terminated the RELA with the first defendant, ceased supply of the petroleum products and demanded the second and third defendants to cease operation at the petrol station. The plaintiff claimed that the second and third defendants had detained and converted plaintiff's station and equipments for their own use and had failed to deliver the same to the plaintiff. The plaintiff commenced this suit claiming, inter alia, that the defendants had wrongfully and maliciously conspired to perpetrate fraud on

the plaintiff in the disposal of the land which had entitled the defendants to legal possession of the land and, enabled the defendants' continued operation of the plaintiff's petrol station under the plaintiff's name. The plaintiff sought damages for conspiracy.

Held, dismissing the plaintiff's claim for damages for conspiracy:

(1) There was in existence a valid, binding and enforceable agreement for the lease renewal for a further period of 15 years. In the light of the existence of plaintiff's valid renewed lease and plaintiff's lawful occupation of the land, the first defendant's disposal of the land to the new proprietors during the subsistence of the lease period was wrongful and constituted a clear breach of the terms and conditions of the renewed lease (see paras 17–18).

(2) In an action premised on a tort of conspiracy, it is incumbent on the plaintiff to prove the existence of the defendants' conspiratorial agreement to intentionally injure and cause economic loss to the plaintiff (see para 23); *Mrs Kok Wee Kiat v Kuala Lumpur Stock Exchange Berhad & Ors* [1979] 1 MLJ 71; *SCK Group & Anor v Sunny Liew Siew Pang & Anor* [2011] 4 MLJ 393; *Double Acres Sdn Bhd v Tiarasetia Sdn Bhd* [2000] 7 CLJ 550 and *MGG Pillai v Tan Sri Dato Vincent Tan Chee Yioun & Other Appeals* [1995] 2 MLJ 493 referred.

(3) A civil proceeding involving an allegation of fraud mandates a higher degree of standard of proof, requiring plaintiff to prove plaintiff's allegation beyond reasonable doubt and not on a balance of probabilities (see para 27); *CGU Insurance Bhd v Asean Security Paper Mills Sdn Bhd* [2006] 3 MLJ 1; *Chong Song @ Chong Sum & Anor v Uma Devi a/p V Kandiah* [2011] 2 MLJ 585 and *Saminathan v Pappa* [1981] 1 MLJ 121 referred.

(4) The plaintiff failed to establish that the first defendant as part of the parties' conspiratorial plan had wrongfully disposed the leased land to facilitate the second and third defendants' wrongful continued operation of plaintiff's petrol station. The plaintiff failed to prove to the required degree of proof the existence of defendants' conspiratorial agreement to cause loss and to deprive plaintiff's rightful entitlement to the proceeds from plaintiff's petrol station. There was insufficient evidence from which inference of defendants' conspiracy could be conclusively determined to the required degree of proof (see para 32).

[Bahasa Malaysia summary

Menurut perjanjian pajakan defendan pertama telah memberikan pajakan kepada plaintif sebidang tanah untuk tempoh 15 tahun bagi tujuan pembinaan stesen petrol plaintif. Menurut perjanjian lesen peruncit ('PLP'), defendan pertama telah menjalankan perniagaan stesen petrol plaintif atas tanah

tersebut. Menurut PLP itu, plaintif telah membina stesen petrol di atas tanah tersebut dan membekalkan produk-produk dan peralatan-peralatan petroleum untuk perniagaan stesen petrol defendan pertama. Semua bangunan, loji dan peralatan hendaklah kekal sebagai harta plaintif. Setelah tamat tempoh 15 tahun, plaintif telah menurut perjanjian pajakan memberikan defendan pertama notis berhubung niat plaintif melanjutkan pajakan untuk 15 tahun lagi. Defendan pertama bagaimanapun menafikan pelaksanaan plaintif untuk memilih bagi pembaharuan pajakan dan mendesak peralatan plaintif dialihkan daripada tanah tersebut. Plaintif kemudian diberitahu bahawa tanah tersebut bersama peralatan plaintif telah dijual kepada defendan-defendan kedua dan ketiga. Plaintif dengan itu menamatkan PLP dengan defendan pertama, menghentikan bekalan produk-produk petroleum dan mendesak defendan-defendan kedua dan ketiga menghentikan operasi stesen petrol itu. Plaintif mendakwa bahawa defendan-defendan kedua dan ketiga telah ditahan dan menukar stesen dan peralatan plaintif untuk kegunakan mereka sendiri dan telah gagal menyerahkan yang sama kepada plaintif. Plaintif telah memulakan guaman ini menuntut, antara lain, bahawa defendan-defendan telah dengan salah berkonspirasi dan berniat jahat untuk melakukan fraud ke atas plaintif dalam jualan tanah tersebut yang memberi hak kepada defendan-defendan milikan sah ke atas tanah tersebut dan, membolehkan operasi berterusan defendan-defendan ke atas stesen petrol plaintif di bawah nama plaintif. Plaintif memohon ganti rugi kerana konspirasi.

Diputuskan, menolak tuntutan plaintif untuk ganti rugi kerana konspirasi:

(1) Sememangnya terdapat perjanjian yang sah, terikat dan boleh dikuatkuasakan yang wujud untuk pembaharuan pajakan bagi tempoh 15 tahun lagi. Berdasarkan kewujudan pajakan diperbaharui yang sah plaintif dan pendudukan sah plaintif atas tanah tersebut, jualan tanah defendan pertama kepada pemilik baru sepanjang tempoh pajakan adalah salah dan membentuk pelanggaran jelas terma dan syarat pajakan diperbaharui itu (lihat perenggan 17–18).

(2) Dalam tindakan yang berdasarkan tort kerana konspirasi, adalah menjadi kewajipan plaintif untuk membuktikan kewujudan perjanjian berunsur konspirasi defendan-defendan yang berniat menjejas dan mengakibatkan kerugian ekonomi kepada plaintif (lihat perenggan 23); *Mrs Kok Wee Kiat v Kuala Lumpur Stock Exchange Berhad & Ors* [1979] 1 MLJ 71; *SCK Group Bhd & Anor v Sunny Liew Siew Pang & Anor* [2011] 4 MLJ 393; *Double Acres Sdn Bhd v Tiarasetia Sdn Bhd* [2000] 7 CLJ 550 dan *MGG Pillai v Tan Sri Dato Vincent Tan Chee Yioun & Other Appeals* [1995] 2 MLJ 493 dirujuk.

(3) Prosiding sivil yang melibatkan dakwaan fraud mewajarkan tahap piawai bukti yang lebih tinggi, yang memerlukan plaintif membuktikan dakwaan plaintif adalah melampaui keraguan munasabah dan bukan atas

imbangan kebarangkalian (lihat perenggan 27); *CGU Insurance Bhd v Asean Security Paper Mills Sdn Bhd* [2006] 3 MLJ 1; *Chong Song @ Chong Sum & Anor v Uma Devi a/p V Kandiah* [2011] 2 MLJ 585 dan *Saminathan v Papa* [1981] 1 MLJ 121 dirujuk.

(4) Plaintif telah gagal membuktikan bahawa defendan pertama sebagai sebahagian daripada rancangan konspirasi pihak-pihak dengan salah telah menjual tanah yang dipajak untuk memudahkan defendan-defendan kedua dan ketiga meneruskan operasi stesen petrol plaintif. Plaintif telah gagal membuktikan tahap bukti yang dikehendaki berhubung kewujudan perjanjian konspirasi defendan-defendan yang mengakibatkan kerugian dan menafikan plaintif hak plaintif yang sah terhadap hasil kutipan daripada stesen petrol plaintif. Terdapat keterangan yang tidak mencukupi yang mana inferens berhubung konspirasi defendan-defendan boleh ditentukan secara konklusif mengikut tahap bukti yang dikehendaki (lihat perenggan 32).]

Notes

For cases on conspiracy to defraud, see 12 *Mallal's Digest* (4th Ed, 2011 Reissue) paras 78–81.

For cases on fraud, see 7(2) *Mallal's Digest* (4th Ed, 2011 Reissue) paras 2648–2649.

Cases referred to

Ayer Hitam Tin Dredging Malaysia Bhd v YC Chin Enterprise Sdn Bhd [1994] 2 MLJ 754, SC (refd)

CGU Insurance Bhd v Asean Security Paper Mills Sdn Bhd [2006] 3 MLJ 1; [2006] 2 CLJ 409, CA (refd)

Chong Song @ Chong Sum & Anor v Uma Devi a/p V Kandiah [2011] 2 MLJ 585, CA (refd)

Double Acres Sdn Bhd v Tiarasetia Sdn Bhd [2000] MLJU 477; [2000] 7 CLJ 550, HC (refd)

Lee Chin Kok v Jasmin Arunthuthu Allegakoen & Ors [2000] 4 MLJ 481; [2000] 4 CLJ 305, SC (refd)

MGG Pillai v Tan Sri Dato Vincent Tan Chee Yioun & Other Appeals [1995] 2 MLJ 493, CA (refd)

Mrs Kok Wee Kiat v Kuala Lumpur Stock Exchange Berhad & Ors [1979] 1 MLJ 71, FC (refd)

SCK Group Bhd & Anor v Sunny Liew Siew Pang & Anor [2011] 4 MLJ 393; [2010] 9 CLJ 389, CA (refd)

Saminathan v Pappa [1981] 1 MLJ 121, PC (refd)

Janet Chai Pei Ying (Renee Tiun with her) (Chooi & Co) for the plaintiff.
Jerry Ling (Lee Ling & Partners) for the first defendant.
Su Tiang Joo (Nasema Jalaludheen and Soh Peng Hui with her) (Cheah Teh & Su) for the second and third defendant.

Nik Hasmat JC:

FACTUAL BACKGROUND

[1] Pursuant to a lease agreement dated 6 September 1988, the first defendant granted a lease to the plaintiff a parcel of land held under HS(D) 7736, Lot 263, Mukim Senggarang, District of Batu Pahat, State of Johor ('the said land') for a period of 15 years effective from 27 August 1988. The lease was for the purpose of the erection of the plaintiff's petrol station and the first defendant's operation of the plaintiff's petrol station business on 'the said land'.

[2] In accordance with cl 2(d) of the lease annexure, the plaintiff was given the option to renew the lease for a further term of 15 years before the expiration of the lease, by giving the first defendant a notice in writing of not less than three months of the plaintiff's intention to renew lease. By way of a notice in writing dated 2 April 2003, the plaintiff duly exercised the plaintiff's option to renew the lease for the renewed term of 15 years which had been agreed by the first defendant.

[3] The first defendant was licensed by the plaintiff to operate the plaintiff's petrol station business on 'the said land' since 1988, upon the plaintiff's granting of the original lease to the first defendant. The first defendant was one of the six partners trading under the name Chin Soon Choon who was granted the dealership to operate the plaintiff's petrol station for the period of 1 June 2001–1 June 2006, pursuant to the retailer license agreement dated 24 March 2003 ('RELA'), entered into between the plaintiff, first defendant and first defendant's partners.

[4] Pursuant to RELA, the plaintiff erected a petrol station on the land and provided petroleum products and equipments for the first defendant's petrol station business namely petrol tanks, dispensing pumps, air balance, ground and underground tanks, compressor, the plaintiff's signages and, information technology equipment. It was provided in cl 3(C) of the lease annexure that all erections, buildings, pumps, machineries, plant or other appliances constructed or erected on the said land during the lease period shall remain the property of the plaintiff.

[5] The first defendant in a letter to the plaintiff dated 6 October 2003, had informed the plaintiff that the plaintiff's lease had expired, and that the defendant was free to seek new supplier for the petroleum products. The first defendant denied the plaintiff's exercise of option for the renewal of the lease and demanded the removal of the plaintiff's equipments from the said land vide the first defendant's solicitor's notice dated 19 December 2003. The

plaintiff however disputed the first defendant's denial of the plaintiff's renewed lease vide the plaintiff's letter dated 26 December 2003.

[6] The plaintiff was subsequently informed by the second and third defendants that the said land together with the plaintiff's equipment had been sold to the second and third defendants pursuant to a sales and purchase agreement executed between the defendants dated 19 April 2004 ('the SPA'). The plaintiff accordingly terminated the plaintiff's RELA with the first defendant, ceased supply of the petroleum products and, demanded the second and third defendants to cease operation at the petrol station. The plaintiff claimed that despite the plaintiff's repeated demands, both the second and third defendants had continuously detained and converted the plaintiff's station and equipments for their own use and, to date have failed to deliver the same to the plaintiff.

THE PLAINTIFF'S CLAIM

[7] The plaintiff claimed that the first defendant was in breach of the terms of the renewed lease in the disposal of the said land, and the plaintiff's petrol station and equipments to the new registered proprietors, the second and third defendants. The plaintiff further claimed that the defendants wrongfully and maliciously conspired to perpetrate fraud on the plaintiff in the disposal of the land to the first and second defendants which had entitled both defendants to legal possession of the land and, enabled the defendants' continued operation of the plaintiff's petrol station under the plaintiff's name. Pursuant to paras 34(d) and 35(a) of the plaintiff's statement of claim, the plaintiff is seeking damages for conspiracy respectively from the first, second and third defendants.

[8] Pursuant to para 34 of the plaintiff's statement of claim, the plaintiff claims the following against the first defendant:

(a) a declaration that there is a valid renewed lease in respect of the said land upon such terms and conditions as contained in the lease annexure for a further term of 15 years effective from 27 August 2003–26 August 2018;

(b) specific performance of the said lease upon such terms and conditions as contained in the said lease and annexure thereto and/or as this honourable court deems fit and just and equitable; or

(c) further or alternatively, damages for breach of the said new lease;

(d) damages for conspiracy;

(e) general damages;

(f) interest at such rate and for such period as may be deemed appropriate by this honourable court;

(g) costs; and

(h) such further and/or other relief as this honourable court deems fit and just.

[9] The plaintiff also claims the following against the second and third defendants pursuant to para 35 of the plaintiff's statement of claim:

(a) damages for conspiracy;

(b) a declaration that the said equipment are the property of the plaintiff;

(c) an injunction to restrain the second and third defendants by themselves, their servants or agents or how otherwise from selling, disposing of or in any way dealing with the said equipment without the consent of the plaintiff;

(d) an order that the second and third defendants do forthwith vacate and give vacant possession of the said land, including all the equipment on the said land;

(e) alternatively an order for the delivery up by the second and third defendants to the plaintiff of the said equipment or payment of RM488,000 being the value of the equipment thereof;

(f) damages for the detention and/or conversion of the said equipment;

(g) general damages;

(h) interest at such rate and for such period as may be deemed appropriate by this honourable court;

(i) costs; and

(j) such further and/or other relief as this honourable court deems fit and just.

ISSUES

[10] Whether at the material time of the first defendant's disposal to the second defendant and third defendants, the plaintiff has a valid lease for the said land for a further term of 15 years from 27 August 2003.

[11] Whether the first defendant had wrongfully and maliciously conspired with the second and third defendants to defraud the plaintiff in the disposal of

the said land together with the plaintiff's petrol station and equipment and, the defendants' continued operation of the plaintiff's petrol station.

COURT JUDGMENT

[12] Upon consideration and evaluation of evidence before the court, the plaintiff failed to prove the plaintiff's claim for damages in respect of the defendants' wrongful and malicious conspiracy to perpetrate fraud against the plaintiff. Accordingly, the plaintiff's claim as specified in paras 34(d) and 35(a) of the plaintiff's statement of claim is disallowed with costs.

[13] The plaintiff's appeal is only in respect of part of the court order dated 15 May 2012 which had dismissed the plaintiff's claim for damages for conspiracy against the respective defendants, pursuant to paras 34(d) and 35(a) of the plaintiff's statement of claim dated 1 September 2005.

GROUNDS OF JUDGMENT

Existence of a valid and binding lease

[14] Pursuant to cl 2(d) of the lease annexure exhibited in P17, the plaintiff was provided the option to renew lease of the said land for a further term of 15 years from 27 August 2003. By way of notice of writing dated 2 April 2003, the plaintiff had duly and properly exercised the plaintiff's option to renew the lease for an agreed total rental of RM84,000 payable annually in advance a sum of RM4,800 for the five years, and RM6,000 for the remaining ten years. Save for the renewal clause, the renewed lease was subjected to the same terms and conditions contained in the lease annexure.

[15] The plaintiff's renewed lease was agreed and personally confirmed by the first defendant during parties' meeting at the plaintiff's petrol station on 7 May 2003 and, vide the first defendant's letter dated 28 May 2003. The plaintiff's solicitor had further confirmed the plaintiff's exercise of option to renew lease by letters dated 9 May 2003 and 28 May 2003. Further, in pursuant of the parties' agreement to the plaintiff's renewed lease, by way of the plaintiff's solicitor's letter dated 9 July 2003, copies of the renewed lease annexure had been forwarded to the first defendant, one month prior to the expiration of the lease.

[16] The first defendant however failed to take steps to execute the plaintiff's renewed lease despite the plaintiff's issuance of reminders notifying the first defendant of her obligation to execute the same. The first defendant further

denied the plaintiff's renewed lease in the first defendant's letter dated 6 October 2003, issued a month after the expiration date of the original lease. The first defendant further demanded the plaintiff to remove the plaintiff's equipment on the ground of the plaintiff's failure to renew lease.

[17] In this regard, it was clear to the court that both parties had generally agreed and concluded the essential terms of the renewed lease, four months prior to the expiration of the lease. There was therefore in existence a valid, binding and enforceable agreement for the lease renewal for a further period of 15 years from 27 August 2003. The first defendant's contention that parties were still in negotiation and had not concluded the terms for the renewal was found to be inconsistent with contemporaneous evidence adduced before the court. In the case of *Lee Chin Kok v Jasmin Arunthuthu Allegakoen & Ors* [2000] 4 MLJ 481; [2000] 4 CLJ 305, the Federal Court referred to the case of *Ayer Hitam Tin Dredging Malaysia Bhd v YC Chin Enterprise Sdn Bhd* [1994] 2 MLJ 754 where the court held:

> It was held by the Supreme Court that the existence of an agreement depends upon the intention of the parties, who must be ad idem, which may be inferred from the language used, the parties conduct having regard to the surrounding circumstances and the object of the contract. The court will generally apply an objective or reasonable man test. Merely because the parties contemplate the preparation of a formal contract, they added, that would not prevent a binding contract from coming into existence before the formal contract is signed. However, when an arrangement is made 'subject to contract' or subject to the preparation and approval of a formal contract, it will generally be construed to mean that the parties are still negotiating and do not intend to be bound until a formal contract is exchanged.

[18] Accordingly, in the light of the existence of the plaintiff's valid renewed lease and the plaintiff's lawful occupation of the land, the first defendant's disposal of the land to the new proprietors during the subsistence of the lease period was wrongful and constitutes a clear breach of the terms and conditions of the renewed lease.

Issue as to whether or not the first defendant had maliciously conspired with the second and third defendants to perpetrate fraud against the plaintiff in respect of the sale of the land, petrol station and equipment

[19] The first defendant was alleged to have wrongfully and maliciously conspired with the second and third defendants to defraud the plaintiff in the disposal of the said land, petrol station and equipments to the new registered proprietors, the second and third defendants. Pursuant to the RELA, the first defendant through her partnership in Chop Chin Soon was licensed by the plaintiff to operate the plaintiff's petrol station from 1 June 2001–1 January

2006 which allowed the first defendant to operate a petrol station business under the name and style of the plaintiff.

[20] The plaintiff had claimed that the second and third defendants were engaged in the business of retailing petroleum products and thus possess the knowledge of the plaintiff's valid renewed lease and the plaintiff's lawful occupation of the said land, the plaintiff's RELA with the first defendant and, the plaintiff's ownership over the petrol station and equipment. The defendants were further claimed to have conspired not to disclose to the plaintiff of the change in the ownership of the land and the plaintiff's petrol station. The plaintiff thus, continued supplying petroleum products to the petrol station due to the plaintiff's belief that the land was owned and the petrol station was being operated by the first defendant.

[21] Accordingly, the plaintiff claimed that both the defendants had wrongfully benefitted from the continued operation of the plaintiff's petrol station and continued use of the plaintiff's equipment pursuant to the RELA that was granted to the first defendant. The defendants were claimed to have wrongfully and maliciously conspired to perpetrate fraud on the plaintiff in the second and third defendant's wrongful take over and utilisation of the plaintiff's petrol station and equipment pursuant to the defendants' SPA with the first defendant.

[22] In this regard, from the circumstances surrounding the disposal of the land, and based on the prominent presence of the plaintiff's petrol station, equipments and signages, the defendants could be inferred to possess the knowledge of the existence of the plaintiff's lawful occupation pursuant to the plaintiff's renewed, valid lease and, the plaintiff's contractual arrangements with the first defendant pursuant to RELA. Further, the first defendant's disposal of the land dated 19 January 2004 was found to have been effected within close interval from the first defendant's 'sudden' denial of the plaintiff's renewed lease in a letter dated 6 October 2003 and, the first defendant's subsequent urgent demand and insistence for the immediate removal of the plaintiff's equipment vide solicitor's letter dated 19 December 2003.

[23] Notwithstanding the above inferences, it is trite that in an action premised on a tort of conspiracy, it is incumbent on the plaintiff to prove the existence of the defendants' conspiratorial agreement to intentionally injure and cause economic loss to the plaintiff. The case of *Mrs Kok Wee Kiat v Kuala Lumpur Stock Exchange Berhad & Ors* [1979] 1 MLJ 71, approve the following definition of conspiracy:

> A conspiracy consists of an agreement of two or more persons to do an unlawful act by unlawful means. The essential ingredients of a conspiracy are —
>
> (1) an agreement between two or more persons,

(2) an agreement for the purpose of injuring the plaintiff, and

(3) acts done in execution of that agreement resulted in damage to the plaintiff.

[24] In the case of *SCK Group Bhd & Anor v Sunny Liew Siew Pang & Anor* [2011] 4 MLJ 393; [2010] 9 CLJ 389, it was held:

> The tort of conspiracy was not constituted by the conspiratorial agreement alone. For conspiracy to take place, there must also be an unlawful object, or if not in itself unlawful, it must be brought by unlawful means. There must be a co existence of an agreement with an overt act causing damage to the plaintiff.

[25] In the case of *Double Acres Sdn Bhd v Tiarasetia Sdn Bhd* [2000] MLJU 477; [2000] 7 CLJ 550, Gopal Sri Ram JCA held that the tort of conspiracy can be committed by two or more persons pursuant to an agreement to commit an unlawful act, to injure a plaintiff and cause the plaintiff economic loss by that unlawful act. It was necessary to prove a meeting of minds and a consensus between the conspiring parties to effect the unlawful acts, object or unlawful purpose, executed pursuant to the agreement. The court would scrutinise and examine overt acts committed by parties to the conspiracy and inferences will be accordingly drawn as to the existence of parties' conspiratorial agreement.

[26] In the case of *MGG Pillai v Tan Sri Dato Vincent Tan Chee Yioun & Other Appeals* [1995] 2 MLJ 493, Gopal Sri Ram JCA held:

> Conspiracy is not always capable of proof by direct evidence. Like so many other facts, an agreement to do an unlawful act or a lawful act by unlawful means may be established by evidence of circumstances from which such an agreement may be inferred. It is axiomatic that there must be proof and not mere conjecture. In the present case, there was sufficient evidence from which conspiracy could be properly inferred.

[27] Further, a civil proceeding involving an allegation of fraud mandates a higher degree of standard of proof, requiring the plaintiff to prove the plaintiff's allegation beyond reasonable doubt and not on a balance of probabilities. In the case of *CGU Insurance Bhd v Asean Security Paper Mills Sdn Bhd* [2006] 3 MLJ 1; [2006] 2 CLJ 409, Gopal Sri Ram, JCA held:

> It is settled law that the standard of proof required when there is an allegation of fraud in a civil proceeding must be one of beyond reasonable doubt and not on a balance of probabilities.

[28] In the case of *Chong Song @ Chong Sum & Anor v Uma Devi a/p V Kandiah* [2011] 2 MLJ 585, the Court of Appeal held:

It is trite law that has been held and upheld by the apex court in this country that the standard of proof for fraud in civil cases is beyond reasonable doubt and that the trial judge in that case had erred when applying the standard of proof as on a balance of probabilities.

[29] The Federal Court decision in the case of *Saminathan v Papa* [1981] 1 MLJ 121, which held that the burden of proof in fraud cases must be proved beyond reasonable doubt was upheld by the Privy Council.

[30] It was thus incumbent on the plaintiff to prove to the required degree of proof, the defendants' wrongful and malicious conspiracy to defraud the plaintiff in the first defendant's disposal of the land and, the second and third defendants' continued operation and, utilisation of the plaintiff's petrol station and equipments under the name and style of the plaintiff. The third defendant in his testimony in court, had strenuously denied any knowledge of the plaintiff's renewed lease, the plaintiff's continued physical occupation on the land and, the plaintiff's contractual arrangement with the first defendant pursuant to RELA. The third defendant stated that he had not visited the land in question and only discovered the plaintiff's RELA upon receipt of the plaintiff's letter of termination to Chop Chin Soon dated 30 March 2005, 14 months after the execution of the SPA and, 11 months after the defendants' new ownership of the said land, on 19 April 2004.

[31] Further, there was clearly no provision in RELA that prohibit the first defendant's sale of the land and, no provision in RELA which obligated the first defendant to inform the plaintiff of the first defendant's disposal of the land to the second and third defendants. It was also clear that the plaintiff's RELA had been executed with the first defendant's partnership with other partners in Chop Chin Choon and, not with the first defendant. DW2 had stated that upon the second and third defendants' new ownership, the land was leased out to Seng Kong Properties Sdn Bhd for a term of three years effective from 19 October 2005. In this regard, the plaintiff failed to prove the defendants' involvement in the said company in the continued management or operation of the plaintiff's petrol station.

[32] The plaintiff thus failed to establish that the first defendant as part of parties' conspiratorial plan had wrongfully disposed the leased land to facilitate the second and third defendants' wrongful continued operation of the plaintiff's petrol station. The plaintiff failed to prove to the required degree of proof the existence of the defendants' conspiratorial agreement to cause loss and to deprive the plaintiff's rightful entitlement to the proceeds from the plaintiff's petrol station. There was clearly before the court insufficient evidence from which inference of defendants' conspiracy could be conclusively

determined to the required degree of proof.

CONCLUSION

[33] Therefore, upon evaluation of the evidence adduced in its entirety, based on the oral and documentary evidence and written submission from the parties' counsel, the court is satisfied that the plaintiff have failed to prove the plaintiff's claim of the defendants' joint and malicious conspiracy to defraud and deprive the plaintiff of their rightful proceeds. The plaintiff was found to have failed to prove beyond reasonable doubt the plaintiff's allegation of the defendants' conspiracy in the disposal of the land and, the takeover, conversion and use of plaintiff's equipments and, petrol station. The plaintiff's claim of the defendants' conspiracy had remained largely unsubstantiated and, accordingly the plaintiff's claim for damages for conspiracy against the first, second and third defendants specified respectively in paras 34(d) and 35(a) of the plaintiff's statement of claim is disallowed.

Plaintiff's claim for damages for conspiracy dismissed.

Reported by Kanesh Sundrum